

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

This matter is before the court on defendant's motion for reconsideration of this court's order denying defendant's motion to file a notice of appeal out of time. On January 23, 2008, defendant pled guilty to one count of being a felon in possession of a firearm. This court originally sentenced defendant on May 9, 2008, resentenced defendant on March 23, 2009, and entered an amended judgment on April 2, 2009. Defendant sought to appeal this court's amended judgment of conviction; however, defendant failed to file a timely notice of appeal. The court denied his motion to file a notice of appeal out of time on June 1, 2009, after finding no good cause or excusable neglect to extend the time to file.

At the time of the amended judgment, defendants were required under Federal Rule of Appellate Procedure 4(b)(1)(A)(i) to file a notice of appeal with the district court within ten days of entry of judgment.¹ The district court, within its discretion, may extend that time for a period not to exceed thirty days on a showing of good cause or excusable neglect. Fed. R. App. P. 4(b)(4). This court entered an amended judgment against defendant on April 2, 2009, and defendant filed a notice of appeal

¹ Rule 4(b)(1)(A) was subsequently amended, and effective December 1, 2009, a criminal defendant now has fourteen days to file a notice of appeal with the district court.

on April 20, 2009, the date the notice was received by prison officials. See United States v. Moore, 24 F.3d 624, 626 (4th Cir. 1994). Therefore, while defendant missed the ten-day window, he filed within the forty-day window during which this court has the authority to allow defendant to file his notice of appeal.

Still, as stated in the court's June 1, 2009 order, defendant has failed to make an adequate showing of good cause or excusable neglect to allow for an extension of time. Defendant asserts that, despite giving instructions to the contrary, his attorney checked the box on his appeal election form indicating that defendant did not want to appeal. The court notes, however, that this appeal form was signed by defendant and indicates that defendant did not want to appeal his sentence. Further, defendant has failed to assert any other cognizable reason for filing late that would amount to good cause or excusable neglect. Accordingly, the court **DENIES** defendant's motion for reconsideration of the order denying defendant's motion to file a notice of appeal out of time.

AND IT IS SO ORDERED.



**DAVID C. NORTON
CHIEF UNITED STATES DISTRICT JUDGE**

**October 11, 2011
Charleston, South Carolina**